IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.16/2000

State of Goa through
Shri Rajiv R. Korde,
Food Inspector,
Directorate of Food & Drugs
Administration,
Government of Goa,
Panaji, Goa. ..... Appellant.

V/s.

1. Shri Narendra Pai Kakode,
M/s. Kakode Brothers.,
Khareband, Margao, Goa.

2. Shri Suresh S. Sakhare,
Partner of M/s. Durga Traders,
Shop No.5, Hotel Goa Land,
B-building, Margao, Goa.

3. Shri Mallikarjun S. Sakhare,
Partner of M/s. Durga Traders,
Shop NO.5, Hotel Goa Land,
B-building, Margao, Goa. ..... Respondents/
Accused.

Mr. S.N. Sardessai, Public Prosecutor for the appellant.

Mr. P.A. Kholkar, Advocate for the respondent No.1.

CORAM : P.V. HARDAS, J.

DATE : FEBRUARY 6, 2003.

ORA JUDGMENT :

By the present appeal, the appellant seeks to challenge acquittal of the respondent who was charged for contravening Section 7(i), read with Section 2(ia),(a) and 2(ia),(m) of the Prevention of Food Adulteration Act, 1954, punishable under Section

16(1)(a)(i) of the said Act. This Court had granted leave to the appeal to file appeal only against the present respondent No.1, (referred to as the "respondent") while leave in respect of respondents/accused Nos.2 and 3 had been rejected.

2. The facts, as are necessary for decision of the appeal, are set out hereunder :

The respondent is the sole proprietor of M/s. Kakode Brothers, located at Khareband, Margao, Goa. The complainant is a Food Inspector and on 29.9.1992 he had inspected the food articles exposed for sale to the public by the respondent. The chilli powder which was being sold by the respondent was found adulterated. A sample of 450 grams had been drawn by the complainant, PW.1 in the presence of PW.2 Inacio Mascarenhas. A panchanama to that effect has been drawn and it is marked "X". The receipt regarding the payment of chilli powder is at Exhibit PW.1/C. The report of the Public Analyst is at Exhibit PW.1/G. The report shows that the sample of chilli powder does not conform to the standard prescribed for it under the provisions of the Food Adulteration Rules and shows presence of added colour.

3. During the trial, Pancha PW.2 Inacio Mascarenhas was declared hostile. The panchanama has not been proved by the prosecution. The learned trial Court found that " Evidence of prosecution witness about the colour of bottles in which samples were filled is, therefore, not consistent". In view of the discrepancy in the colour of the bottle, learned trial Court came to the conclusion that the prosecution has not been able to establish that the sample which was drawn was the sample which was sent for analysis.

4. With the assistance of learned Public Prosecutor appearing for the appellant/State and Mr. P.A. Kholkar, learned Counsel appearing on behalf of the respondent, I have perused the evidence of the prosecution witnesses. It does appear that there is some discrepancy in respect of the colour of the bottle. Heavy burden is cast on the prosecution to establish that the sample which was seized, was the sample that was analysed by the Public Analyst. This is an appeal against acquittal and the reasons given by the learned trial Court do not appear to be perverse. Merely because another view is possible that, by itself, would not be a ground for interfering with the order of acquittal, unless the reasons given by the trial Court are perverse.

5. In my considered opinion, the Judgment of the learned trial Court and the reasons given for the acquittal of the respondent/accused is not perverse and there is no need to interfere with the order of acquittal.

6. Hence, Criminal Appeal No.16/2000 is dismissed.

P.V. HARDAS, J.

ssm.